

**CITY OF FAIRBANKS***Office of the City Attorney*

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OFFICE: 907-459-6750

June 6, 2000

Don Lowell, Chair
Consolidation Committee
P.O. Box 71114
Fairbanks, Alaska 99709

RE: Consolidation Petition Questions

DON:
Dear Mr. Lowell:

The City is reviewing the Consolidation Petition. Several questions have immediately come to mind on matters which the Consolidation Committee may have studied and considered:

1. A.S. 29.06.150(b) provides that upon consolidation, the new municipality succeeds to the "rights, powers, duties, assets, and liabilities" of the municipalities that existed prior to consolidation. The Petition does not address how the proposed new borough, the "Municipality of Fairbanks," would exercise the police, fire protection, building code, road maintenance, and solid waste collection services that it would possess. The Petition does not address expansion of these services in the future. Under current law, these powers could be extended beyond the current City boundaries without an area-wide vote. *See, Area G Home and Landowners Organization, Inc. (HALO) v. Anchorage* 927 P.2d 728, (Alaska 1996). (Supreme Court upheld Anchorage's expansion of police service area by abolishing its old service area and creating new service area that included new area that had previously voted against expansion, without giving residents of that area separate vote on the expansion.)
2. We are not familiar with the term "Urban Service Area" as used in the Petition. How does an "Urban Service Area" differ in powers, duty or function from a Service Area under state and borough law?

Don Lowell

RE: Proposed Municipal Consolidation

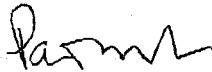
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3. The Petition¹ indicates that "the assets of the [City] Permanent Fund will transfer to a trust reserved for the benefit and use of the new Urban Service Area." In a legal trust, property is held by a trustee for the benefit of a beneficiary. Service Areas have no independent legal existence and Service Area residents have no right to elect Service Area Commissioners or control operations.² What authority exists to provide that an Urban Service Area can be the beneficiary of a trust? What provision of law would prevent the proposed new municipality from spending the Permanent Fund contrary to the wishes of the Urban Service Area residents?
4. Has the Committee considered the effect of passage of the proposed 10 mill maximum property tax levy Initiative on the operations of the proposed new Borough?

We look forward to discussing these and other issues. Give me a call at your convenience.

Sincerely,



Patrick B. Cole,
Deputy City Attorney

cc: James C. Hayes, City Mayor

¹ Page 1, Exhibit "H" of the Petition.

² As former Borough Attorney Jim Nordale frequently noted, service areas are like the "fingernails" of the borough - controlled by the borough and used as the borough sees fit, but with no life of their own. Put in legal terms, a "Service area" is a specific geographical area within which municipal services are furnished by a borough, but service areas have no corporate status or right to sue under any statute. , *North Kenai Peninsula Road Maintenance Service Area v. Kenai Peninsula Borough*, 850 P.2d 636 (Alaska 1993).